

**UNAPPROVED MEETING MINUTES
CITY OF MILPITAS**

Minutes of:	Regular Meeting of Milpitas City Council
Date:	Tuesday, August 2, 2005
Time:	6:00 PM (Closed Session) 7:00 PM (Public Business)
Location:	Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd.

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM.

Mayor Esteves, Vice Mayor Gomez and Councilmembers Giordano, Livengood and Polanski were all present.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda:

(1) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to CA Government Code §54956.9(a) City of Milpitas vs. Turner Construction et al., Santa Clara County Superior Court Case No. 103CV814946 consolidated with Case No. 103CV008400

(2) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to CA Government Code Section 54956.9(a)
City of Milpitas vs. Centerpointe Assoc, L.L. Santa Clara Co. Superior Court Case No. 788366

(3) CONFERENCE WITH LABOR NEGOTIATORS – COLLECTIVE BARGAINING

City's Negotiators: Carmen Valdez, Ed Kreisberg

Anticipated issues under negotiation: Wages, Hours, Benefits, Working Conditions

Pursuant to CA Government Code §54957.7. Organizations represented:

Milpitas Police Officers Association

International Association of Firefighters

Milpitas Employees Association

(4) CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to CA Government Code §54956.9

Property: Approximately 900 square feet of land adjacent to Barber Lane, located within and part of APN No. 086-03-019 in the City of Milpitas

Agency Negotiator: Tambri Heyden

Negotiating Party: Great Mall of the Bay Area

Under Negotiation: Price and Terms

The City Council reconvened in Open Session at 7:04 PM with Mayor Esteves presiding and all Councilmembers present.

**CLOSED SESSION
ANNOUNCEMENTS**

No report given.

PLEDGE

Mayor Esteves led all present in the Pledge of Allegiance.

MINUTES

MOTION: to approve meeting minutes of the City Council meeting of July 5, 2005, as submitted.

Motion/Second: Vice Mayor Gomez / Councilmember Polanski

Approved unanimously by a vote of:

AYES: 5

NOES: 0

SCHEDULE OF MEETINGS

MOTION: to approve the Schedule of Meetings

Motion/Second: Councilmember Polanski / Councilmember Livengood

Approved unanimously by a vote of:

AYES: 5

NOES: 0

PRESENTATIONS

Presentations

Milpitas "National Night Out 2005" on Thursday, August 4th : neighborhoods, community and police work together for an evening of neighborhood gathering on a date selected by the Citizens Advisory Commission. Mayor Esteves encouraged citizens to join neighbors for scheduled events, including gatherings in your area to meet neighbors toward the goals of safety and crime prevention. Police Sergeant Nobita accepted the plaque on behalf of Police Department.

Certificate of Appointment -

Elpidio Estioko was presented with a certificate by the Mayor, upon his recent appointment to the Library Advisory Commission. He thanked the Mayor and Councilmembers.

CITIZENS FORUM

Mike Mendizabal, resident, School Board President, and Past President of Kiwanis Club, said thank you to all Councilmembers for sponsoring local children for the "Spree" event at Mervyn's the following Saturday at 7:00 AM. He said 73 children would participate in the worthwhile back-to-school shopping effort, and from the community volunteers would be needed.

Ron Henning, resident, spoke on eminent domain on Main St. He proposed that the City not employ that technique on property acquisition. Mr. Henning described 116 North Main St. – the building was historical, since 1856 (Winsor building), it was the first iron works and blacksmith shop in the area and believed it should serve as a historical landmark.

ANNOUNCEMENTS

New **Fire Chief Clare Frank** was introduced by City Manager Charles Lawson.

Councilmember Giordano announced that for all Samuel Ayer High School alumnae, a picnic was planned on Saturday, September 17 to bring all classes together at Cardoza Park.

Mayor Esteves was pleased to be part of a Phantom Art Gallery opening, with Milpitas Adult Education school artists displayed. He thanked the Sister City Commission, staff and those who participated in the recent signing ceremony with the Mayor of the City of Dagupan, Phillipines last week. He also read from a letter from a Milpitas Little League South representative, highlighting the Division Championship Tournament last Saturday in Milpitas. Winners would go on to play in Portland, OR and potentially after that to Maine for the national championships.

ANNOUNCEMENT OF CONFLICT OF INTEREST

Mayor Esteves: on Item No. 22 (Cardoza Park), he would abstain due to a property interest adjacent to the park.

APPROVAL OF AGENDA

City Manager Lawson requested removal of item No. 24 from the agenda, and to continue Item No. 4 to the next meeting.

City Attorney Mattas requested that on Item RA5, Council move the Piercey Toyota presentation up, just prior to the Public Hearings.

Vice Mayor Gomez requested to hear Item No. 8 after Item No. 16.

Councilmember Giordano requested to move Item No. 16, to be heard after No. 7.

Councilmember Livengood asked that Item No. 24 be removed from the Agenda.

MOTION: to approve the agenda, as amended.

Motion/Second: Councilmember Livengood / Councilmember Giordano

Approved unanimously by a vote of:

AYES: 5

NOES: 0

CONSENT CALENDAR

Councilmember Polanski requested Item No. 27, Vice Mayor Gomez requested Items No. 22, 25, and 32, and Mayor Esteves requested Item No. 20 all be removed from consent.

MOTION: to approve the Consent Calendar, as amended.

Motion/Second: Councilmember Livengood / Councilmember Giordano

Approved unanimously by a vote of:

AYES: 5

NOES: 0

Consent Calendar Items:

***10. Approve Reappointment to the San Francisco Regional Water System Financing Authority**

Mayor Esteves recommended the re-appointment of Councilmember Livengood to the San Francisco Regional Water System Financing Authority, to a four year term.

***12. Review Past Terrace Gardens, Inc. Annual Financial Reports: Calendar Years 2001 To 2003**

Two past fiscal reports regarding Terrace Gardens were noted as received and filed.

***13. Approve Expense Request from Sister Cities Commission for Materials and Events Supporting the August 16 – 23, 2005 Tsukuba City Cultural & Student Exchange Visit**

1. Approved expenses for the Tsukuba City, Japan, August 2005 cultural and student exchange visit from the City Council's Community Promotions budget.
2. Authorized the City Manager to execute invoices not-to-exceed \$1,035.

***14. Approve Temporary Dedicated Building Inspector**

1. Approved the developer's request for one dedicated Inspector for KB Homes projects in the City of Milpitas, for eleven months.
2. Approved budget appropriation for \$139,107, less an administrative fee, into the Building Inspection Division's budget.

***15. Approve Marquee Request of Linda Arbaugh, Milpitas Community Library**

Approved Librarian Linda Arbaugh's request for marquee August 23 – October 31, 2005.

***17. Waive Reading Beyond the Title and Adopt Ordinance No. 65.134 For Local Electrical Code Amendments in Conjunction with State Adoption of 2004 Edition Of the CA Electrical Code**

Waived second reading beyond the title, and adopted Ordinance 65.134 enacted as Chapter 6, Title II of the Milpitas Municipal Code to adopt and revise local amendments to the 2004 Edition of the California Electrical Code.

***18. Waive Reading Beyond the Title and Adopt Ordinance No. 271, on Public Art**

1. Waived the second reading of Ordinance No. 271.
2. Approved Ordinance No. 271, an ordinance that added Chapter 20 to Title V of the Milpitas Municipal Code requiring the City of Milpitas to create a Public Art Policy, establish a Public Art Committee and dedicate Capital Improvement Project funds to the acquisition and installation of public artwork to further the Public Art Policy ("The Milpitas Public Art Master Plan and Funding Ordinance.").
3. Directed staff to post and publish the ordinance as required by law.

***19. Waive Reading Beyond the Title and Adopt Ordinance No. 124.27 Amending Title XI Chapter 30 (Signs), Amending Title XI-10 (Planning, Zoning and Annexation) & Amending Chapter V-500 (Neighborhood Beautification) of the Municipal Code to Enhance Code Enforcement Program (P-ZT2004-2)**

Waived the second reading and adopted Ordinance No. 124.27, reflecting the updated sign code for the City of Milpitas.

20. Adopt a Resolution Amending the Memorandum of Understanding with Milpitas Supervisors Association

Acting Human Resources Director Carmen Valdez introduced this topic, and was available to answer questions from Council.

Mayor Esteves inquired about a specific item contained in the Resolution, regarding an increase in wages, should that matter arise. If the Milpitas Supervisors Association was guaranteed a raise based on another employee group receiving one, what percent would MSA employees receive?

Ms. Valdez replied it was unknown, prior to the other groups negotiating new MOUs with the City. If no raises were authorized by the City Council for any employee groups, then MSA would receive no increase.

Mayor Esteves further inquired, if one assumed all increases were uniform for one year across the board, what would happen if some increases were a different percentage increase in different units? Ms. Valdez replied that one hoped no increases were scheduled in the first year, then after that any response was unknown. The Mayor identified this as a potential problem.

MOTION: to adopt Resolution No. 7544, amending the current Memorandum of Understanding between the City of Milpitas and the Milpitas Supervisors Association to reflect the changes defined in the Side Letter dated July 21, 2005 and to extend the MOU through December 31, 2006.

Motion/Second: Councilmember Livengood/ Vice Mayor Gomez

Approved unanimously by a vote of:

AYES: 5

NOES: 0

***21. Adopt a Resolution Granting Initial Acceptance: Great Mall Parkway / 1880 Capacity Improvement Project, Project No. 4178**

Adopted Resolution No. 7545 granting initial acceptance of the project, subject to the usual one-year warranty period, and reduce the faithful performance bond to \$44,674.78.

22. Adopt a Resolution Approving an Initial Study/ Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Milpitas Sports Center and Cardoza Park Improvements, Project No. 8149

Mayor Esteves departed Council Chambers on this issue, as he abstained from discussion and voting on this matter. Vice Mayor Gomez presided.

City Engineer Greg Armendariz presented this project and resolution to City Council. Much of the Milpitas community has been built around the track at the Sports Center, and he assured that all citizens were included in the planning process. In fact, notices were mailed to many residents, and several public meetings were held to hear comments. A small number of residents attended and few comments were received.

Vice Mayor Gomez asked whether the school district was involve. The City Engineer confirmed it was from the beginning. Program Manager Mark Rogge had been in contact with Dr. Black at Milpitas Unified School District on the project. Also, Jason Jones from the consulting firm RDF was present at the Council meeting.

Vice Mayor Gomez inquired about parking concerns. Mr. Rogge replied that allowing for enough spaces, and to permit an adequate turning radius for fire vehicles at the site were among concerns.

Vice Mayor Gomez asked about the gym and its future. Mr. Armendariz explained that the City had applied for a Federal Emergency Management Agency grant for the gym, due to its planned use as an emergency shelter site in Milpitas. The City was placed onto a wait list for funds for the renewal of that facility. FEMA recognized that it would serve as a shelter in time of emergency, such as an earthquake. The City Engineer acknowledged that even if no grant money was forthcoming that the facility still required updating including air conditioning and lighting in the gym.

MOTION: to adopt Resolution No. 7546 approving an Initial Study/ Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the proposed Milpitas Sports Center and Cardoza Park Improvements, Project No. 8149.

Motion/Second: Councilmember Livengood / Councilmember Giordano

Motion carried by a vote of: AYES: 4
NOES: 0
ABSTAIN: 1 (Esteves)

***23. Adopt a Resolution
Supplementing The Passage Of
The Cable Television
Franchise Ordinance Calling
For Quality Service And
Labor Harmony**

Adopted Resolution No. 7547 supplementing the passage of the Cable Television Franchise Ordinance calling for Quality Service and Labor Harmony.

***24. Adopt a Resolution
Adjusting Salary Ranges for
Adult Crossing Guard
Classification**

This item was removed from the agenda.

**25. Approve Amendment No. 5
to Professional Services
Agreement Between the City
of Milpitas and Meyers, Nave,
Riback, Silver and Wilson**

Vice Mayor Gomez explained that he removed this from consent because he wanted to ensure that the City had looked at comparable cities and to outside entities, with regard to attorney's fee, for comparison.

Councilmember Giordano expressed that it was necessary to consider ways to make the increase more palatable. She stated that the Council's City Attorney Subcommittee had reviewed this matter and determined that the rate increase was merited.

Vice Mayor Gomez inquired of the City Attorney: what does the contract say about rate increases? City Attorney Mattas replied that it says nothing specific. However, while the City Attorney may return to Council from time to time, this specific amendment includes a series of rate increases over a two year period. In the past, this issue typically came back on an annual basis.

MOTION: Approve the Meyers, Nave contract amendment No. 5.

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

***26. Approve Purchase Orders
for (1) General Legal and
Personnel Services, (2)
Arbitration, Grievance and**

Authorized issuance of purchase orders to Meyers Nave in the amounts of:
(1) \$594,000 for general personnel and legal services for fiscal year 2005-2006,
(2) \$105,000 for personnel arbitration, grievance and PERB proceedings, and
(3) \$400,000 for public works construction related litigation expenses.

**Public Employee Relations
Board (PERB) Hearings, and
(3) Public Works Construction
Litigation Expenses Provided
by Meyers Nave FY 2005-06**

**27. Approve Interim City
Manager Contract for Charles
Lawson**

Several questions arose on this issue and the City Attorney responded.

The City Attorney stated that if the Council authorized the proposed contract before them, Milpitas would have a Contracted City Manager, Mr. Lawson.

MOTION: to approve contract for Charles Lawson to serve as Interim City Manager.

Motion/Second: Vice Mayor Gomez / Councilmember Livengood

Motion carried by a vote of:

AYES: 4

NOES: 1 (Polanski)

***28. Reject Bid and Authorize
the Re-advertisement for Bid
Proposals: Police Evidence
Freezer, Project No. 8159**

Rejected bid of Coulter Construction, and authorized the re-advertisement of the project for bid proposals.

***29. Approve Permittee
Dedication and Improvement
Agreement For Calaveras
Center Project No. 3164**

Approved the Permittee Dedication and Public Improvement Agreement and authorized City Manager to execute the same, subject to the approval as to form by the City Attorney.

***30. Approve Renewal Of
Annual Software Support and
Maintenance Fees with
Cayenta For The Financial
System Through June 30, 2006**

Authorized the City Manager to approve the previously budgeted payment of the annual software support and maintenance fee to Cayenta.

***31. Appropriate Funds and
Award the Bid for Police
Computers to Surah Inc. and
HPM Networks**

1. Awarded the bid for the purchase of fifty-nine (59) computers to Surah, Inc. for \$44,687.45 including tax and freight, and forty-four (44) monitors to HPM Networks, Inc. for \$8,764 including tax and freight.
2. Approved budget appropriation from the State Asset Forfeiture Fund in the amount of \$28,451

**32. Reject Bid Protest And
Award Construction Contract:
2005 Annual Slurry Seal,
Project No. 4223 and 2006
Annual Street Resurfacing,
Project No. 4229, American
Asphalt Repair and
Resurfacing Co., Inc.**

At 9:31 PM, following item No. 9, this item was discussed.

City Engineer Greg Armendariz stated that on June 10, a bid opening was held for the work and four bids were received. The lowest bid came in from American Asphalt. Following that, a bid protest from Granite Rock was lodged. The agenda report explained this annual work project.

Mr. Armendariz gave a detailed description of the material used on city streets and why one material product for slurry seal produced a longer life, particularly on residential streets. He distributed sample of asphalt product to Councilmembers. Also, the City Engineer specified that he wanted to give an opportunity for the Granite Rock representative to be heard.

Mr. Don Baird of Granite Rock Repair Co. wanted the bid specifications to be changed. He felt that the City specified a single source of product for black aggregate material that would meet specifications. In fact only one supplier, 105 miles away, could respond. He rejected staff comments on safety, relative to street surface material as well as remarks on uniform street appearance. Savings for the City were estimated to be 19%, claimed Mr. Baird, with regard to a local supplier.

Vice Mayor Gomez asked of the City Attorney: if there was only one supplier of black aggregate, was the City in conformance with California's Public Contracts code? The City Attorney replied yes. The Vice Mayor expressed that citizens care that potholes were fixed, not specifically the color of the roadway surface. If savings were realized from the black to gray color, he believed that was worthwhile. He anticipated receiving data from staff about difference in color versus safety standards.

(1) MOTION: to reject the bid protest received from Granite Rock.

Motion/Second: Vice Mayor Gomez/ Councilmember Livengood

Approved unanimously by a vote of: AYES: 5
NOES: 0

(2) MOTION: to award the construction contract to American Asphalt Repair and Resurfacing Co., Inc. in the amount of \$96,169.

Councilmember Livengood requested a friendly amendment, accepted by Vice Mayor Gomez, that the City must have a clear plan for enforcement ability, so that City residents do not drive down recently slurry-sealed streets and thus, to reduce number of claims.

Motion/Second: Vice Mayor Gomez/ Councilmember Livengood

Approved unanimously by a vote of: AYES: 5
NOES: 0

***33. Approve Budget
Appropriation: Annual
Sidewalk Replacement Project
No. 4067 (Staff Contact**

Approved a budget appropriation for \$30,000 from the Street Fund into Project 4067, Annual Sidewalk Replacement.

***34. Approve Plans and
Specifications and Authorize
the Advertisement for Bid
Proposals: City Reservoir
Evaluation & Upgrades,
Project No. 7091**

1. Approved plans and specifications for Project 7091.
2. Authorized advertising for bid proposals.

***35. Approve Plans and
Specifications and Authorize
the Advertisement for Bid
Proposals: Building
Improvements (Tasman
Gateway Monument
Maintenance Access), Project
No. 8135**

1. Approved plans and specifications for Project 8135.
2. Authorized advertising for bid proposals.

***36. Approve Budget
Appropriation and Award
Construction Contract: 2005
ADA Sidewalk Ramps Project
No. 4226 & Building Improve-
ments Project No. 8135**

1. Awarded Construction Contract to JJR Construction, Inc. in the amount of \$84,625.
2. Approved a budget appropriation for \$20,000 from the Street Fund into Project 4226, 2005 ADA Sidewalk Ramps.

***37. Authorize the City
Manager to Execute an
Agreement Amendment: JMH
Weiss, Inc., Abel Street,
Midtown Improvements
Project No. 8157**

Authorized the City Manager to execute an Agreement Amendment with JMH Weiss in the amount of \$116,000.00 subject to approval as to form by the City Attorney.

***38. Approve Amendments No. 4 and No. 5 to Valley Oil Company Contract**

1. Approved Amendments No. 4 and No. 5 to the Valley Oil Company contract, subject to approval as to form by the City Attorney.
2. Authorized an increase in the not-to-exceed amount to a maximum compensation of \$499,332.46.

***39. Award Construction Contract; Shade America, Inc.: Tot Lot Sunshade Structure, Project No. 8102**

Awarded the Tot Lot Sunshade Structure contract to Shade America, Inc. in the amount of \$41,000.

***40. Authorize the Purchasing Agent to Dispose of Surplus Police Vehicles at Auction**

Approved the request to auction two Police Vehicles.

***41. Approve a Change Order to Purchase Order C422306 to Interstate Paving and Grading for Emergency Road Repair**

Approved a change order to Interstate Grading and Paving, Inc. Purchase Order C422306 for \$16,017.26 to cover the cost of the emergency road repairs.

***42. Approve Payment Requests to Miscellaneous Vendors and Contractors**

Approved the following eleven payment requests:

1. \$7,960.24 to DARE America Merchandise for proprietary t-shirts, supplies and awards for the DARE program for the Police Department. (Funds are available from the Police Department operating budget for this purchase.)
2. \$6,139.00 to Simplex/Grinnell LP for the removal and replacement of the deficient fire alarm system at the Community Center. The work was performed as an emergency under section I-2-5.04 of the Municipal Code "Emergency Authority of Purchasing Agent" because of the eminent threat to public safety, (Funds are available from the Community Center Improvement Project CIP #8102 for this purchase.)
3. \$32,100.00 to the Milpitas Chamber of Commerce for funding of the visitor bureau services, various publications, Business Experience Day, and retail promotions for FY 2005-06. (Funds are available from the City Council operating budget for this purchase.)
4. \$17,420.00 to ACCO to provide the annual HVAC maintenance and service at City Hall. Due to the customized nature of the proprietary software used in the HVAC control system, this is a Sole Source purchase. (Funds are available from the Facilities Maintenance operating budget for this purchase.)
5. \$24,500.00 to Alice Wright for citywide shopping cart retrieval services. On February 20th, 2002 the City entered into a multi year contract for these services. This represents the annual payment for FY 05-06. (Funds are available from the Neighborhood Preservation operating budget for this purchase.)
6. \$18,900.00 to ThyssenKrupp Elevator Corp. for annual elevator service and preventive maintenance at City Hall and the Police/Public Works building. Due to the customized nature of the proprietary software used in the HVAC control system, this is a Sole Source purchase. (Funds are available from the Public Works Department operating budget for this service.)
7. \$6,000.00 to Crayton Jones for annual property rental of the Police firing range and training center for the Police Department. (Funds are available from the Police Department operating budget for this service)
8. \$5,983.00 to Golden Gate Mechanical for the removal and replacement of the failed HVAC compressor at the Sal Cracolice Senior Center. The work was

performed as an emergency under Section I.2.5.04 of the Municipal Code, "Emergency Authority of Purchasing Agent", because of the eminent threat to public health. Funds are available from the Public Works Department operating budget for this service)

9. \$12,500.00 to Tecogen© Natural Gas for annual preventive maintenance service, (conducted quarterly) for the co-generation system at the Sports Center for the Recreation Services Division. (Funds are available from the Recreation Services operating budget for this service)
10. \$14,190.00 to Alliance Occupational Medicine for new hire exams, DMV medical exams, DOT testing, Workers' Comp exams and Hazardous Material Physicals for the Human Resources Department. (Funds are available in the Human Resources Department operating budget for these services.)
11. \$7,533.79 to Folger Graphics for production of 13,000 postcards and 13,000 subscription mailers to announce the Single Family Recycling program's change to single stream recycling. (Funds are available in the Engineering Division operating budget for this service.)

PRESENTATION

Piercey Toyota
RA5 item:

Mr. Kai Giffen, area representative for Piercey Automotive Group, introduced many of the top leadership staff from Piercey Automotive Group and the Toyota corporation, including Mr. Bill Piercey, founder of the company.

Chief Financial Officer Tom Chadwell of Piercey gave a brief presentation, providing the history of the dealership, its success and its goals for expansion in the South Bay. The company looked forward very much to doing business in the city, to grow the business as well as bring good products to consumers in Milpitas. Mr. Chadwell referred to large display boards with artwork indicating the look and feel of the future show room.

Furthermore, the dealer representatives invited Councilmembers, staff and the public present to observe a number of brand new vehicles parked in front of the City Hall, including Toyota's latest hybrid offering.

Councilmember Livengood inquired where Toyota vehicles were assembled.

Mr. Wells (Toyota of Northern California) responded that Toyota assembled 1.8 million vehicles in the U.S last year. Most automobiles and trucks that arrive from Japan were the hybrid models, while the hybrid Toyota Camry was built in the U.S.

PUBLIC HEARINGS

1. Introduce Ordinance No. 238.2 Amending Title VIII, Chapter 5 (Water Efficient Landscapes) and Ordinance No. 240.1 Amending Title VIII, Chapter 6 (Water Conservation)

Principal Planner Dennis Carrington presented the water efficient landscape ordinance, which had originally been adopted in 1993. Presently at issue was the only species planted locally that consistently requires lower salt content water, so an exception was needed in recycled water use provisions of the ordinances. Amendments were necessary for the two referenced ordinances.

Mayor Esteves inquired regarding what would be the impact on residential homes. Principal Engineer Darryl Wong explained that the City had been working toward having recycled water available at certain parts of city, with lines being constructed so some schools and parks can use recycled water for landscape use (not for individual residents). At this time, it was not feasible for single homeowners. Primarily, recycled water product was intended for large landscaped areas. An incentive was available to large users because the City sells recycled water at reduced rates.

Mayor Esteves opened the public hearing. No comments were made.

MOTION: to close the Public Hearing.

Motion/ Second: Vice Mayor Gomez/ Councilmember Giordano

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

Mr. Carrington read the title of the ordinance: Amending an Existing Subsection to Section 3.03 of Title VII Chapter 5 entitled "Water Efficient Landscapes"

MOTION: to waive the first reading beyond the title of Ordinance No. 238.2.

Motion/ Second: Councilmember Livengood / Councilmember Giordano

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

MOTION: to introduce Ordinance No. 238.2

Motion/ Second: Councilmember Livengood / Councilmember Giordano

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

Mr. Carrington read the title of the ordinance: Amending an Existing Subsection to Section 3.00 of Title VII, Chapter 6 Entitled "Water Conservation"

MOTION: to waive the first reading beyond the title of Ordinance No. 240.1

Motion/ Second: Councilmember Livengood / Councilmember Giordano

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

MOTION: to introduce Ordinance No. 240.1

Motion/ Second: Councilmember Livengood / Councilmember Giordano

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

2. Adopt Resolution Confirming Assessments: Weed Abatement Report and Assessment List

Assistant Fire Inspector Albert Zamora presented the assessment report of weeds abated, as listed in agenda packet. He recommended the Mayor conduct the public hearing and adopt the Resolution confirming the report.

A representative from Santa Clara County fire department was present as well.

Councilmember Livengood noted that in the past, he'd seen a longer list of properties. He inquired what occurred to reduce the number of locations requiring weed abatement this year.

Mr. Zamora explained that the County accelerated its abatement timelines, and sent out a new 15-days notification letter in addition to original notification. He further expressed that it was more costly to homeowner for the county to abate the weeds. Success may be noted by the fact that 82% of property owners in 2005 (vs. 50% in prior years) were in compliance with weed abatement.

Mayor Esteves opened Public Hearing and no public comments were heard.

(1) MOTION: Close the public hearing

Motion / Second: Councilmember Livengood / Councilmember Giordano

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

(2) MOTION: Adopt Resolution 7543 confirming assessments on property owners for cost of weed abatement.

Motion / Second: Councilmember Livengood / Councilmember Giordano

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

3. Introduce Ordinance Nos. 120.43 and 208.40, Amendments to Title VIII of the Milpitas Municipal Code for 2005/06 and 2006/07 Water, Recycled Water, and Sewer Rate Adjustments

Principal Engineer Darryl Wong presented the rate adjustments issue. He acknowledged that these ordinances had been before the Council twice already this year. New rates were previously introduced and adopted in May and June. Since that time, however, the City Attorney recommended returning to the City Council, in order to comply with public notice requirements contained in Proposition 218, requiring individual notices to all property owners. Also, a separate protest hearing has been scheduled on Tuesday, September 6.

Previously, a citizen task force was formed and it made recommendations to Council last year. Clearly, residents and business owners preferred to "lock in" reasonable rates now, rather than finding double digit increases into the future.

Councilmember Polanski inquired about billing customers every two months, and whether it was reasonable to change the billing cycle to monthly. Would this be reviewed for possibly 2006 or 2007? Mr. Wong had conferred with the City's Finance Department and a full cost/benefit analysis would be necessary to respond, particularly with regard to cost of additional meter readings and additional invoicing paperwork.

Mayor Esteves asked what would be the total revenue that the City would receive in the first year of implementing the new rates. Mr. Wong replied \$75,000 per month, which was less than \$1 million in the year for each water and sewer services.

Mayor Esteves opened the public hearing. No public comments were received.

(1) MOTION: to close the public hearing

Motion/ Second: Councilmember Livengood / Councilmember Giordano

Motion carried on vote of: AYES: 5
NOES: 0

Councilmember Livengood supported the increase, stated the utilities were cost recovery items, and that no money was generated with these utilities.

Mayor Esteves reminded the public that he had voted no back in May. He felt the City needed to look further at this issue to reduce cost to residents.

Councilmember Polanski had read the protest letters received from residents to date. She was concerned that if the City moved to monthly billing, then costs would increase even more. She would vote no on this matter now, even though she had voted yes in May.

Mr. Wong read the title of the first ordinance regarding Water Rates, Amending Sections 6.13, 6.14, 6.15 and 6.16, Chapter 1, Title VIII of the Milpitas Municipal Code, relating to Quantity Charges, Bimonthly Water Meter Charges, Fire Service Charges and Effective Date of Water Rates.

(2) MOTION: to waive the first reading beyond title of Ordinance No. 120.43

Motion/Second: Councilmember Livengood / Councilmember Giordano

Motion carried unanimously on vote of: AYES: 5
NOES: 0

(3) MOTION: to introduce Ordinance No. 120.43

Motion/Second: Councilmember Livengood / Councilmember Giordano

Motion carried on vote of: AYES: 3
NOES: 2 (Esteves, Polanski)

Mr. Wong read the title of the next ordinance regarding Sewer Rates: Amending Sections 6.01, Chapter 2, Title VIII of the Milpitas Municipal Code, relating to Sewer Service Charges.

(4) MOTION: to waive the first reading beyond title of Ordinance No. 208.40

Motion/Second: Councilmember Livengood / Councilmember Giordano

Motion carried unanimously on vote of: AYES: 5
NOES: 0

(5) MOTION: to introduce Ordinance No. 208.40

Motion/Second: Councilmember Livengood / Councilmember Giordano

Motion carried on vote of: AYES: 3
NOES: 2 (Esteves, Polanski)

4. Approve Fairfield Midtown Vesting Major Tentative Tract Map (MA2005-4) Application to Create Two Parcels, Located at Corner of Abel, Main and Great Mall Parkway and Create 481 Condominium Units (APN's: 086-12-015, 016, 020) Zoned R4-TOD

Acting Planning Director Tambri Heyden stated this matter contained two parts. The property owner requested to continue this matter to August 16, allowing for more time for the City Attorney's review of the property, and the request to subdivide parcel into two and to build condominiums.

A request was made to continue the Public Hearing to the next City Council meeting.

Mayor Esteves opened the Public Hearing and heard no comments.

MOTION: to continue the public hearing to August 16.

Motion/Second: Vice Mayor Gomez / Councilmember Livengood

Motion carried unanimously by a vote of : AYES: 5
NOES: 0

5. Approve the Amended Density Bonus, "S" Zone Approval Amendment No. SA2005-33, Use Permit Amendment No. UA2005-10 And Major Tentative Tract Map No. MA2005-3 for Apton Plaza – 230 North Main Street

Senior Planner Dennis Carrington introduced the actions necessary regarding the Apton Plaza project. Before the Council was an S Zone amendment that would reduce the number of units to be built from 96 to 93 units. There was also a density bonus change, a unit change type, some three bedroom units changed to four, and the addition of a 5th tower. Mr. Carrington said there were additional minor edit changes in the amendment.

The Use Permit amendment contained a parking reduction from 28 to 27 spaces, and from 25 feet to 24 feet at the location of Railroad and Weller Lane, near the new proposed library. Additionally, the tower height was reduced to 60 feet, among other details.

Councilmember Livengood asked when construction would start. A developer's representative answered: in October or November this year and would last 15 – 18 months.

Mayor Esteves asked what were the comments from the developer on the proposed amendments, if any. Architect Kurt Anderson said he found the amendments acceptable.

The Mayor opened the Public Hearing and no comments were received.

(1) MOTION: to close Public Hearing

Motion/Second: Councilmember Polanski / Vice Mayor Gomez

Motion carried unanimously by vote of: AYES: 5
NOES: 0

(2) MOTION: to approve the amended Density Bonus, "S" Zone Amendment No. SA2005-33, the Use Permit Amendment No. UA2005-10 and the Major Tentative Tract Map No. MA2005-3.

Motion/Second: Councilmember Giordano / Vice Mayor Gomez

Motion carried unanimously by vote of: AYES: 5
NOES: 0

UNFINISHED BUSINESS

6. Urgency Ordinance No. 270 Establishing a 45-Day Moratorium on Establishment and Operation of Medical Marijuana Dispensaries to Become Effective Immediately

City Attorney Steve Mattas explained that the urgency ordinance proposed on this subject required a 4/5 vote of the City Council to be adopted and that it would take effect immediately. His office had been working on this issue and the proposed moratorium allowed more time for extensive research on this topic. It would likely return to the Council at a later time in order to be extended.

Public Hearing speaker:

Mr. Donald Irving, Milpitas resident, said in 1996 voters adopted a Compassionate Care Act. In Sacramento, AB420 was introduced. A Santa Clara Valley cooperative was formed. He asked the City Council to adopt policies that were caring.

Mayor Esteves reiterated his concern for associated crime with the marijuana dispensary, and the criminal element potential around such facilities. He pointed out the limited availability of public safety officers.

Councilmember Polanski stated she would vote in line with her prior votes on this subject and opposed the moratorium.

City Attorney Mattas read the title of the ordinance: an Interim Ordinance Making Findings and Establishing a Temporary Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries to Become Effective Immediately

(1) MOTION: to waive the reading beyond the title of Ordinance No. 270

Motion/Second: Vice Mayor Gomez / Councilmember Giordano

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

(2) MOTION: to adopt Ordinance No. 270 (four fifths vote required)

Motion/Second: Vice Mayor Gomez / Councilmember Giordano

Motion carried by a vote of:

AYES: 4
NOES: 1 (Polanski)

**7. Art In Your Park Starlite
Project Art Piece**

Recreation Services Manager Kathleen Yurchak reviewed the details on the "Art in Your Park" project to date.

Larry Voellger, President of the Milpitas Alliance for the Arts, presented three models for art pieces proposed for the Council's consideration. The Arts Commission selected the 2nd place choice (Gates), compared to the 1st place choice (Bench) according to neighborhood votes.

Councilmember Polanski agreed with the Vice Mayor, who had expressed that it should be a neighborhood art work choice and the voting survey of the neighbors should guide the choice made tonight.

Mr. Voellger displayed the Starscape Bench (#1), the Starlite Gates (#2) and the Community Pole (3#). The community vote supported the bench.

Councilmember Giordano liked the Starlite Gates and would prefer to vote on that one, as did Mayor Esteves.

MOTION: to approve the Starscape Bench artwork for Starlite Park and to approve funding in the amount of \$10,000 from the new Public Arts Fund in the FY 2005-06 budget (as specified at the June 7 City Council meeting).

Motion/Second: Vice Mayor Gomez / Councilmember Livengood

Motion carried by a vote of:

AYES: 3
NOES: 2 (Giordano, Esteves)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor/Agency Chairman Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 9:50 PM.

**RA2.
ROLL CALL**

PRESENT: Mayor/Chair Esteves, Vice Mayor/Vice Chair Gomez, and Agency/Councilmembers Giordano, Livengood and Polanski

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of July 5, 2005, including joint meeting with the City Council, as submitted.

Motion/ Second: Agency/Councilmember Polanski / Agency/Councilmember Giordano

Motion carried unanimously by a vote of:

AYES: 5
NOES: 0

**RA4.
AGENDA**

MOTION to approve the agenda and consent calendar items, as submitted.

Motion/Second: Agency/Councilmember Livengood/Agency/Councilmember Giordano

Motion carried unanimously by a vote of:

AYES: 5
NOES: 0

**RA5. Presentation by Piercey
Toyota Regarding a Proposed
Dealership at Elmwood
(Northeast Corner of I-880
and Great Mall Parkway) and
Authorize the City Manager to
Select a Consultant to Assist**

A presentation was given earlier in the meeting by Piercey Toyota representatives.

MOTION: to authorize the City Manager to identify a redevelopment consultant to assist with the plan amendment and to return to the Agency with a negotiated contract for Agency approval, once a consultant was selected. Motion included the improvements to signs adjacent to I-880.

**with Amending the
Redevelopment Area Plan**

Motion/Second: Vice Chair/Vice Mayor Gomez / Agency/Councilmember Giordano

Motion carried unanimously by a vote of:

AYES: 5
NOES: 0

**RA6. Receive Progress Report
from Senior Facilities Subcom-
mittee on the Senior Center
Project**

Program Manager Mark Rogge presented progress of the new Senior Center. He reviewed the purpose of Senior Center, with five specific details: flexible, for use after hours, a "green" building, with expandable space, and beautiful. He explained the methodology and timing of the project, and reviewed the timeline for construction.

Mr. Rogge displayed some of the building programming that was underway, and further expressed that the new facility would be tripling the size for the City's Senior Center. Staff would proceed with advertising for an architectural consultant next, as delineated in the schedule of activity, as displayed.

Mayor Esteves wanted to ensure that the work plan schedule went along with the new Library project. The two appeared to occur at similar times. Clearly, there should be no waste of time, as Milpitas seniors had been waiting a long time for the new facility.

Councilmember Giordano recalled that in the Subcommittee, members had talked about work being done in the kitchen/addition part. She inquired on its status. Mr. Rogge said he could ask the consultant to determine the answer. Starting that work soon depended on whether it would be disruptive to current library patrons.

Mayor Esteves asked whether parking for the facility was an issue. Mr. Rogge said staff would seek to maximize parking at the Senior Center (current library). The next update was due to the Council after a Request for Proposals was issued, after November 2005.

MOTION: to receive and file the staff report.

Motion/Second: Agency/Councilmember Polanski / Vice Chair/Vice Mayor Gomez

Motion carried unanimously by a vote of:

AYES: 5
NOES: 0

**RA 7. Receive Progress Report
on Library, Midtown East and
West parking garages**

Program Manager Mark Rogge presented the progress reports. He introduced Mr. Jeff Adams, the consultant on the parking garages. The Library project would be updated in more detail at the next City Council meeting, while expenditures and the schedule were displayed for the Agency members.

Mr. Rogge displayed expenditures to date along with the construction schedule for the garages project. The schedule was being met on time, at the time of the meeting.

Mid Town Garages were also on schedule, with approval of the conceptual design scheduled at this meeting, with expenditures to date displayed.

He reviewed garage funding difference (planned cost v. real expense) of \$5 million. One concept to find more funding was revenue generation perhaps from retail tenants. This was a concept that the County seemed open to, and another one included the County owning the land on which the garage will be built. Mr. Rogge identified contributions to the West Garage as: the County's at 51%, the City's at 22%, and an existing gap at 27%.

Councilmember Livengood was concerned about the high usage by County of the garage next to its new medical center, while their payment toward the cost of building was low. 51% cost contribution v. 88% estimated usage was troubling to him. Other concepts presented were worth pursuing, e.g. selling the garage to the County. The County probably was on a faster time frame, versus City since Milpitas' library wouldn't be built for at least three years.

Mayor Esteves reiterated why was the County paying only \$25,000 per space when the true estimated cost was \$40,000 per space? He said the Memorandum of Understanding between the two governments needed further attention.

Mr. Rogge expressed that the Developer Agreement was not prepared and signed yet, so the comments heard at this meeting would be taken into account when the DDA was written.

At discussion of the East Garage, angled parking was a new consideration for the East Parking Garage in order to meet space/building requirements, but that might provide fewer total spaces. Garage cost comparisons were provided, comparing to some of the area cities that were also planning new parking structures. So much of the construction costs were unknown while the increasing materials costs were evident. Some contractors were very busy and only would bid on high priced/profit projects.

MOTION: to receive and file the staff report, and to approve recommendations for the Library Subcommittee to approve the garage concept plans and cost plans.

Councilmember Livengood clarified that with regard to the Midtown East Garage, his motion was to approve the concept design, and the Transit Occupancy Tax reserve. With regard to the West Garage, the motion included going back to the County for discussion about the cost difference identified and find a way to make the plan work, re-work the plan, possibly even selling the garage to the County or other options.

Motion/Second: Agency/Councilmember Livengood / Vice Chair/Vice Mayor Gomez

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

*** RA 8. City of Milpitas
Investment Portfolio Status
Report for the Quarter Ended
June 30, 2005**

Noted receipt and filed the investment report for the quarter ended June 30, 2005.

*** RA 9. Approve Amendment
to Memorandum of
Understanding and Owner
Participation Agreement with
Apton Properties to Change
the Total Number of Units in
the Condo Project from 96 to
93 Units**

Approve the amended Memorandum of Understanding and Owner Participation Agreement with Apton Properties to authorize the reduction in units from 96 to 93 with the requirement of 19 of these units to be affordable.

**RA 10.
ADJOURNMENT**

Mayor Esteves adjourned the Redevelopment Agency meeting at 10:31 PM.

REPORTS OF OFFICERS AND BOARDS

**8. Mayor's Appointments to
City Commissions**

Mayor Esteves stated he wished to introduce his recommendations in the order that follows.

(1) Sister City Commission

Appoint Roselda Mateo from Alternate No. 1 to the existing vacancy with a term expiring September 2007.

Appoint Massoud Arefi from Alternate No. 2 to the Alternate No. 1 position with a term expiring September 2006.

Appoint Beverly McCarter to Alternate No. 2 position to a term expiring September 2005.

MOTION: appoint members to Sister City Commission as recommended by the Mayor.

Motion/Second: Councilmember Livengood / Councilmember Polanski

Motion carried unanimously by vote of: AYES: 5
NOES: 0

(2) Open Government Commission

Appoint Denny Weisgerber to an existing vacancy with a term expiring August 2007.

Appoint Tom Valore to an existing vacancy with a term expiring August 2007.

Appoint Paul Hay to an existing vacancy with a term expiring August 2007.

Appoint Edward Blake, if one of the above is not appointed.

Appoint Dem Nitafan, if one of the above is not appointed.

MOTION: in light of earlier vote with regard to amending Open Government Ordinance, move not to approve the above recommendations from the Mayor.

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried by vote of: AYES: 3
NOES: 2 (Esteves, Polanski)

(3) Economic Development Commission

Appoint Pat Songsiri from Alternate No. 1 to existing vacancy with a term expiring April 2007.

Appoint Minh Nguyen from Alternate No. 2 to Alternate No. 1 with a term expiring April 2007.

Appoint Tom Valore to Alternate No. 2 with a term expiring April 2006.

Mayor Esteves learned that in the By Laws of this Commission, it was required to have a Commissioner as a hotel industry representative. Since Mr. Songsiri is not from a hotel the Mayor preferred to wait filling the vacancy.

MOTION: to make no appointments at this time.

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried unanimously by vote of: AYES: 5
NOES: 0

**9. Consider Acquisition of
Milpitas Unified School
District Parcel at the Corner of
Washington Street and Roger
Street**

This item was considered prior to the Redevelopment Agency agenda at 9:15 pm

Mayor Esteves explained that the Milpitas Unified School District was interested in selling the piece of property. Some residents contacted him asking whether the City could buy the parcel and put it to valuable use, such as a park or green space.

The Mayor thought the Council should consider it and determine what to come up with. It was also on the next Planning Commission meeting agenda, on a zoning recommendation.

Public Speaker:

Dorothea Randolph, 1625 Roger St., spoke about the parcel across the street from her house. She wanted utilities Hetch Hetchy, PG&E, and the phone company to help the City buy that land. She wanted it beautified, to improve the bare look. She had attended meetings of the School District to express her opinion on the future of the parcel.

Mayor Esteves thanked Ms. Randolph for her input and wanted staff to explore possible alternatives, such as a public safety station or other use.

Several Councilmembers pointed out the array of current open/green space around the parcel now, including public parks and school play area.

Councilmember Livengood believed the City should protect taxpayers and wanted MUSD to maximize its potential profit on this land for the benefit of the community's schools. If the City got involved, that wouldn't best help the school district. He felt it best to let the school district proceed as planned to maximize profit. None of the alternate suggestions works for him.

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

1. 2004-05 meeting dates: he had attended all twelve
2. Subcommittee of VTA Board was displayed, including himself, who made the recommendation for new the VTA General Manager Michael Burns (who was hired from San Francisco Municipal Railway)
3. \$150,000 grant provided to Milpitas for BART planning process
4. New money available: \$291,259 for various potential uses. He recommended referral to 2 subcommittees on how best to spend it
5. I-680 Smart Carpool Lane: a High Occupancy Vehicle lane for Electronic Toll System was proposed, at the Sunol Grade on the interstate

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

ORDINANCES

16. Waive Reading Beyond the Title and Introduce Ordinance No. 262.2, "An Ordinance of the City Council of the City Of Milpitas Amending Section I-310-4.10 of the Milpitas Municipal Code" Regarding the Open Government Ordinance

This topic was considered early on the agenda, following the public hearings.

Vice Mayor Gomez introduced the concept he proposed in the ordinance amendment: recommending a new City Council Subcommittee to act as the Open Government Commission until the full five member Commission was appointed.

Councilmember Giordano supported the proposed ordinance. She offered a friendly amendment that the City Council Subcommittee should exist until December 31, 2006 (in place of one year in the ordinance amendment text).

Councilmember Polanski stated she would vote no on the amendment. She preferred the Open Government Commission made up of Milpitas citizens.

Mayor Esteves wanted the Open Government process to be objective, so he wanted the Commission vacancies filled, with residents. Council serve as liaisons to Commissions, not as voting members. Therefore, he believed this way Councilmembers would vote on open government issues, and found this proposal awkward.

Vice Mayor Gomez noted that the Mayor voted against the original Open Government ordinance earlier this year, and he did not understand the Mayor's position.

Councilmember Livengood supported the amendment, agreeing the Subcommittee would do outreach to the public to seek volunteers for the Commission and to join in on *discussion of open government issues*.

(1) MOTION: motion to amend the proposed ordinance amendment changing the second sentence that the new Council Subcommittee would exist explicitly until December 31, 2006 and thus strike out the section stating "one year or until . . ."

Motion/Second: Vice Mayor Gomez / Councilmember Giordano

Motion carried by a vote of: AYES: 3
NOES: 2 (Esteves, Polanski)

City Attorney Mattas read the title of Ordinance No. 262.2: Amending Section I-310-1.10 of the Milpitas Municipal Code (regarding Open Government)

(2) MOTION: to waive the first reading of amended proposed Ordinance 262.2

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Approved unanimously by a vote of: AYES: 5
NOES: 0

(3) MOTION: to introduce Ordinance No. 262.2

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried by a vote of: AYES: 3
NOES: 2 (Esteves, Polanski)

Council took an announced break at 9:01 PM.

RESOLUTIONS

Items were adopted on the Consent Calendar.

BIDS AND CONTRACTS

Items were adopted on the Consent Calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 11:08 PM.

Meeting minutes respectfully submitted by:

Mary Lavelle, City Clerk